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UNRATIFIED OLNEY-PAUNCEFOTE TREATY OF ARBITRATION BETWEEN THE
UNITED STATES AND GREAT BRITAIN.¹

Signed at Washington, January 11, 1897.

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being desirous of consolidating the relations of amity which so happily exist between them and of consecrating by treaty the principle of international arbitration, have appointed for that purpose as their respective plenipotentiaries:

The President of the United States of America, the Honorable Richard Olney, Secretary of State of the United States; and

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable Sir Julian Pauncefote, a Member of Her Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Honourable Order of the Bath and of the Most Distinguished Order of St. Michael and St. George and Her Majesty's Ambassador Extraordinary and Plenipotentiary to the United States.

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following articles:

ARTICLE I.

The high contracting parties agree to submit to arbitration in accordance with the provisions and subject to the limitations of this treaty all questions in difference between them which they may fail to adjust by diplomatic negotiation.

ARTICLE II.

All pecuniary claims or groups of pecuniary claims which do not in the aggregate exceed £100,000 in amount, and which do not involve the determination of territorial claims, shall be dealt with and decided by an arbitral tribunal constituted as provided in the next following article.

In this article and in Article IV the words "groups of pecuniary claims" mean pecuniary claims by one or more persons arising out of the same transactions or involving the same issues of law and of fact.

ARTICLE III.

Each of the high contracting parties shall nominate one arbitrator who shall be a jurist of repute and the two arbitrators so nominated shall within two months of the date of their nomination select an umpire. In case they shall fail to do so within the limit of time above mentioned, the

¹ For. Rel., U. S., 1896, p. 238.

umpire shall be appointed by agreement between the members for the time being of the Supreme Court of the United States and the members for the time being of the Judicial Committee of the Privy Council in Great Britain each nominating body acting by a majority. In case they shall fail to agree upon an umpire within three months of the date of an application made to them in that behalf by the high contracting parties or either of them, the umpire shall be selected in the manner provided for in Article X.

The person so selected shall be the president of the tribunal and the award of the majority of the members thereof shall be final.

ARTICLE IV.

All pecuniary claims or groups of pecuniary claims which shall exceed £100,000 in amount and all other matters in difference, in respect of which either of the high contracting parties shall have rights against the other under treaty or otherwise, provided that such matters in difference do not involve the determination of territorial claims, shall be dealt with and decided by an arbitral tribunal, constituted as provided in the next following article.

ARTICLE V.

Any subject of arbitration described in Article IV shall be submitted to the tribunal provided for by Article III, the award of which tribunal, if unanimous, shall be final. If not unanimous either of the high contracting parties may within six months from the date of the award demand a review thereof. In such case the matter in controversy shall be submitted to an arbitral tribunal consisting of five jurists of repute, no one of whom shall have been a member of the tribunal whose award is to be reviewed and who shall be selected as follows, viz: two by each of the high contracting parties and, one to act as umpire, by the four thus nominated and to be chosen within three months after the date of their nomination. In case they shall fail to choose an umpire within the limit of time above-mentioned, the umpire shall be appointed by agreement between the nominating bodies designated in Article III acting in the manner therein provided. In case they shall fail to agree upon an umpire within three months of the date of an application made to them in that behalf by the high contracting parties or either of them, the umpire shall be selected in the manner provided for in Article X.

The person so selected shall be the president of the tribunal and the award of the majority of the members thereof shall be final.

ARTICLE VI.

Any controversy which shall involve the determination of territorial claims shall be submitted to a tribunal composed of six members three of whom (subject to the provisions of Article VIII) shall be judges of the Supreme Court of the United States, or justices of the Circuit Courts to be nominated by the President of the United States, and the other three of whom (subject to the provisions of Article VIII) shall be judges of the British Supreme Court of Judicature or members of the Judicial Committee of the Privy Council to be nominated by Her Britannic Majesty, whose award by a majority of not less than five to one shall be final. In case of an award made by less than the prescribed majority, the award shall also be final unless either Power shall, within three months after the award has been reported protest that the same is erroneous, in which case the award shall be of no validity.

In the event of an award made by less than the prescribed majority and protested as above provided, or if the members of the arbitral tribunal shall be equally divided, there shall be no recourse to hostile measures of any description until the mediation of one or more friendly Powers has been invited by one or both of the high contracting parties.

ARTICLE VII.

Objections to the jurisdiction of an arbitral tribunal constituted under this treaty shall not be taken except as provided in this Article.

If before the close of the hearing upon a claim submitted to an arbitral tribunal constituted under Article III or Article V either of the high contracting parties shall move such tribunal to decide, and thereupon it shall decide that the determination of such claim necessarily involves the decision of a disputed question of principle of grave general importance affecting the national rights of such party as distinguished from the private rights whereof it is merely the international representative, the jurisdiction of such arbitral tribunal over such claim shall cease and the same shall be dealt with by arbitration under Article VI.

ARTICLE VIII.

In cases where the question involved is one which concerns a particular State or Territory of the United States, it shall be open to the President of the United States to appoint a judicial officer of such State or Territory to be one of the arbitrarors under Article III or Article V or Article VI.

In like manner in cases where the question involved is one which concerns a British Colony or possession, it shall be open to Her Britannic Majesty to appoint a judicial officer of such Colony or possession to be one of the arbitrators under Article III or Article V or Article VI.

ARTICLE IX.

Territorial claims in this treaty shall include all claims to territory and all claims involving questions of servitudes, rights of navigation and of access, fisheries and all rights and interests necessary to the control and enjoyment of the territory claimed by either of the high contracting parties.

ARTICLE X.

If in any case the nominating bodies designated in Article III and V shall fail to agree upon an umpire in accordance with the provisions of the said articles, the umpire shall be appointed by His Majesty the King of Sweden and Norway.

Either of the high contracting parties, however, may at any time give notice to the other that, by reason of material changes in conditions as existing at the date of this treaty, it is of opinion that a substitute for His Majesty should be chosen either for all cases to arise under the treaty or for a particular specified case already arisen, and thereupon the high contracting parties shall at once proceed to agree upon such substitute to act either in all cases to arise under the treaty or in the particular case specified as may be indicated by said notice; provided, however, that such notice shall have no effect upon an arbitration already begun by the constitution of an arbitral tribunal under Article III.

The high contracting parties shall also at once proceed to nominate a substitute for His Majesty in the event that His Majesty shall at any time notify them of his desire to be relieved from the functions graciously accepted by him under this treaty either for all cases to arise thereunder or for any particular specified case already arisen.

ARTICLE XI.

In case of the death, absence or incapacity to serve of any arbitrator or umpire, or in the event of any arbitrator or umpire omitting or declining or ceasing to act as such, another arbitrator or umpire shall be forthwith appointed in his place and stead in the manner provided for with regard to the original appointment.

ARTICLE XII.

Each government shall pay its own agent and provide for the proper remuneration of the counsel employed by it and of the arbitrators appointed by it and for the expense of preparing and submitting its case to the arbitral tribunal. All other expenses connected with any arbitration shall be defrayed by the two governments in equal moieties.

Provided, however, that, if in any case the essential matter of difference submitted to arbitration is the right of one of the high contracting parties to receive disavowals of or apologies for acts or defaults of the other not resulting in substantial pecuniary injury, the arbitral tribunal finally disposing of the said matter shall direct whether any of the expenses of the successful party shall be borne by the unsuccessful party, and if so to what extent.

ARTICLE XIII.

The time and place of meeting of an arbitral tribunal and all arrangements for the hearing and all questions of procedure shall be decided by the tribunal itself.

Each arbitral tribunal shall keep a correct record of its proceedings and may appoint and employ all necessary officers and agents.

The decision of the tribunal shall, if possible, be made within three months from the close of the arguments on both sides.

It shall be made in writing and dated and shall be signed by the arbitrators who may assent to it.

The decision shall be in duplicate, one copy whereof shall be delivered to each of the high contracting parties through their respective agents.

ARTICLE XIV.

This treaty shall remain in force for five years from the date at which it shall come into operation, and further until the expiration of twelve months after either of the high contracting parties shall have given notice to the other of its wish to terminate the same.

ARTICLE XV.

The present treaty shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof and by Her Britannic Majesty; and the mutual exchange of ratifications shall take place in Washington or in London within six months of the date hereof or earlier if possible.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty and have hereunto affixed our seals.

Done in duplicate at Washington, the 11th day of January, 1897.

RICHARD OLNEY. [L. s.]

JULIAN PAUNCEFOTE. [L. s.]

[UNITED STATES AND GREAT BRITAIN.]

MINUTES OF CONFERENCES ¹

held at Washington the 9th, 10th, 11th and 12th of January, 1911, as to the application of the award delivered on the 7th September, 1910, in the North Atlantic Coast Fisheries Arbitration to existing regulations of Canada and Newfoundland.

The undersigned having considered in detail and with expert assistance the steps to be taken in consequence of the award in connection with the objections of the United States Government to existing regulations of the fisheries in Canadian and Newfoundland treaty waters as recorded in Protocol XXX of the proceedings before the Tribunal of Arbitration, and having conferred as to the best means of dealing with these objections, have arrived at the following conclusion:

It is unnecessary to refer any existing regulations to the Commission of Experts mentioned in the award in application of Article III of the special agreement of January 27, 1909, or to reconvene the Tribunal of Arbitration; but any difference in regard to the regulations specified in Protocol XXX, which shall not have been disposed of by diplomatic methods, shall be referred to the Permanent Mixed Fishery Commissions to be constituted as recommended by the Hague Award, under Article IV of the special agreement in the same manner as a difference in regard to future regulations would be so referred under the recommendations in the award, unless by mutual consent some other rules and method of procedure are adopted.

January 12, 1911.

PHILANDER C KNOX
JAMES BRYCE
E. A. MORRIS
CHANDLER P. ANDERSON
A B AYLESWORTH
L P BRODEUR

¹ U. S. Treaty Series, No. 553.